

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

RUBEN CASTILLO,

Plaintiff,

v.

Civil Action No. 5:14CV46
(STAMP)

C.O. VANCE, Badge No. 160,

Defendant.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Background

The pro se¹ plaintiff, Ruben Castillo, filed a complaint pursuant to 42 U.S.C. § 1983. He also sought leave to proceed in forma pauperis² and filed an application to proceed without prepayment of fees and affidavit with an attached ledger statement. This matter was referred to United States Magistrate James E. Seibert for report and recommendation pursuant to Local Rule of Prisoner Litigation Procedure 2. On April 29, 2014, Magistrate Judge Seibert issued a report and recommendation recommending that the plaintiff's application to proceed without prepayment of fees be denied. The magistrate judge advised the plaintiff that he may

¹"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1341 (9th ed. 2009).

²"In forma pauperis" describes the permission granted to a poor person to proceed without liability for court fees or costs. Black's Law Dictionary 779 (7th ed. 1999).

file written objections to his proposed findings and recommendations within 14 days after being served with a copy of the magistrate judge's recommendation. The plaintiff did not file his objections, but instead paid his filing fee on May 13, 2014. For the reasons set forth below, this Court finds that the report and recommendation of the magistrate judge should be affirmed and adopted in its entirety.

II. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. Because no objections were filed, all findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

III. Discussion

Based upon the plaintiff's application, the magistrate judge found that the plaintiff's account had a balance of \$41.85 and the average monthly deposits into his trust account for the six months preceding the filing of his complaint were \$163.33. Moreover, the plaintiff states in his application that he has a checking account with a balance of \$5,000.28, receives gifts of \$100.00 every two months from friends, and a house worth approximately \$80,000.00. Due to the plaintiff's assets, therefore, this Court concludes that the magistrate judge's findings that plaintiff has sufficient funds

to pay his filing fee are not clearly erroneous. Accordingly, the plaintiff's request to proceed without prepayment of fees is denied.

IV. Conclusion

Because the plaintiff has not objected to the report and recommendation of the magistrate judge, and because this Court finds that the magistrate judge's recommendation is not clearly erroneous, the ruling of the magistrate judge is hereby AFFIRMED and ADOPTED in its entirety. Accordingly, for the reasons set forth above, the plaintiff's request for leave to proceed in forma pauperis is DENIED. This Court recognizes that plaintiff did in fact pay his filing fee on May 13, 2014 (ECF No. 12), and thus this action will not be dismissed for a failure to pay the filing fee.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this memorandum opinion and order to the pro se plaintiff by certified mail and to counsel of record herein.

DATED: May 23, 2014

/s/ Frederick P. Stamp, Jr.

FREDERICK P. STAMP, JR.

UNITED STATES DISTRICT JUDGE